

In the Court of Appeals of the State of Alaska

Rocky Seaman,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13555**

Order

Petition for Rehearing

Date of Order: **11/10/2021**

Trial Court Case No. **3KN-19-00198CI**

Before: Allard, Chief Judge, Wollenberg, and Terrell, Judges.

The Appellant, Rocky Seaman, seeks rehearing of our decision in his case: *Seaman v. State*, ___ P.3d ___, Op. No. 2708, 2021 WL 4343851 (Alaska App. Sept. 24, 2021).

Seaman raises a number of different issues in his petition for rehearing. First, Seaman argues that this Court “misconstrued the central question in this case” because it focused its analysis on “active term of imprisonment” rather than “total term of imprisonment.” We disagree. The question before us was the correct interpretation of the discretionary parole statute, which uses the term “active term of imprisonment.”¹ Moreover, Seaman’s argument that “total term of imprisonment” should be interpreted as excluding a defendant’s good time credit is directly contrary to the plain language of Alaska’s truth-in-sentencing statute, AS 12.55.015(g). This provision clearly treats a defendant’s time on mandatory supervised release — *i.e.*, the defendant’s “good time”

¹ AS 33.16.090(b).

— as part of a defendant’s “total term of imprisonment.”²

Seaman also argues that this Court should have construed the legislative history in the light most favorable to Seaman because his case was only at the pleading stage. But the issue presented by Seaman’s post-conviction relief application was a pure question of law to which this Court applies its independent judgment.³ This Court was not required to — nor would it be appropriate to — defer to Seaman’s interpretation of the relevant legislative history.

Seaman also refers to a Department of Correction’s policy that apparently excludes good time credit from the calculation of a defendant’s eligibility for pre-release furlough. This policy was not cited in Seaman’s appellate briefing. In any case, we do not find this interpretation of the pre-release furlough statute particularly relevant to the question before us because the statute refers only to “a sentence” and does not use either “active term of imprisonment” or “total term of imprisonment.”⁴ We likewise do not find any of Seaman’s other challenges to our analysis persuasive.

² AS 12.55.015(g) provides:

(g) Unless a defendant is ineligible for a deduction under AS 33.20, when a defendant is sentenced to a term of imprisonment of two years or more, the sentence consists of two parts: (1) a minimum term of imprisonment that is equal to not less than two-thirds of the total term of imprisonment; and (2) a maximum term of supervised release on mandatory parole that is equal to not more than one-third of the total term of imprisonment; the amount of time that the inmate actually serves in imprisonment and on supervised release is subject to the provisions of AS 33.20.010-33.20.060.

³ See *Callan v. State*, 904 P.2d 856, 857 (Alaska App. 1995); *Hillman v. State*, 382 P.3d 1198, 1200 (Alaska App. 2016).

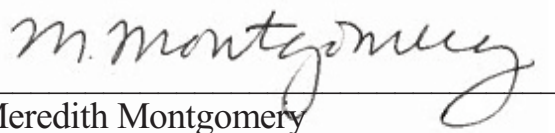
⁴ See AS 33.30.0111(d).

Lastly, Seaman argues that the Court failed to address Seaman’s “separate time accounting issue,” which he asserts “did not rely on the interpretation of AS 12.55.015(g) for its resolution.” We have reviewed the pleadings in the superior court. The record shows that Seaman raised this time accounting issue for the first time in a motion for reconsideration following the dismissal of his post-conviction relief application. The trial court did not rule on this new argument.

As a general matter, new arguments raised for the first time in a motion for reconsideration are considered waived.⁵ Accordingly, because Seaman has waived his separate time accounting issue, we do not address it here.

The petition for rehearing is DENIED.

Clerk of the Appellate Courts


Meredith Montgomery

cc: Judge Gist
Trial Court Clerk
Publishers (Op. No. 2708, 9/24/2021)

Distribution:

Mail:
Seaman, Rocky

Email:
Pace, Andalyn

⁵ See *McCarter v. McCarter*, 303 P.3d 509, 513 (Alaska 2013) (new arguments raised for the first time in a motion for reconsideration are waived); *Clemensen v. Providence Alaska Med. Ctr.*, 203 P.3d 1148, 1155 (Alaska 2009) (“[W]e will not consider an issue raised for the first time in a motion for reconsideration.”).